IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

WP(C).No. 25346 of 2007(P)

OS 12.8/2003 of MUNSIFF COURT, TIRUR
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PETITIONERS: DEFENDANTS:
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1. ATHIYATTIL KARATTIL SIDDIQUE,
S/O.HYDROSE,THRIKKANDIYOOR AMSOM,
KUMARAMANGALAM DESOM,TIRUR TALUK,
MALAPPURAM DISTRICT.

2. ATHIYATTIL KARATTIL SYEDALAVI,
S/O./HYDROSE,
---DO-- ---DO-.

3. ATHIYATTIL KARATTIL MUSTHAFA,
S/O.HYDROSE, ---DO--,.

BY ADV. SRI.K.K.MOHAMED RAVUF

RESPONDENT: PLAINTIFF:

CHEMMUKKAL ALAVIKUTTY HAJI,
S/O.MAMMEDKUTTY HAJI,BUSINESS,
KOTTAKKAL AMSOM DESOM, TIRUR TALUK.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 25346 OF 2007

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Dated this the 17th day of September, 2007.

J U D G M E N T

This writ petition is filed with a prayer to set aside Ext.P3 order, i.e., the order passed in I.A.681/07 in O.S.128/03. The suit is one for a declaration and consequential injunction where the title and identity of the property is necessary for a proper determination of the case. Under the present application the defendants want their property also to be measured in the light of their documents 1906, 1915 and 1955 mentioned in the affidavit so that it will be easy to resolve the dispute between the parties. If the properties are overlapping, it is a matter that requires adjudication. I am conscious of the fact that in a suit for declaration burden is strongly on the plaintiff to prove his case but at the same time it has also to be taken into consideration when the defendants set up right in themselves and that property has also to be identified so that the Court can attempt to find out who is having a better title to the

property. No hardship will be caused to the plaintiff by directing the Commissioner to identify the property with respect to the title deeds. Therefore, the order under challenge is set aside and the Court below is directed to remit the Commissioner's plan and report to the same Commissioner and direct him to measure the defendants' property as well in the light of the documents mentioned in the petition. It is also made clear that the plaintiff can also file work memo before the Commissioner for the points to be noted. I also allow the present defendants to file work memo, if they want to note about any additional particulars. Since, I am disposing the matter in the admission stage itself, the Court below is directed to give notice to the plaintiff before remitting the Commissioner's plan and report.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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